

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:04CR497
)	
JAMES S. SHOLEFF,)	
)	
Defendant.)	

STATEMENT OF FACTS

The United States and the defendant, James S. Sholeff ("Sholeff"), agree that had this matter proceeded to trial, the United States would have proven the facts set forth in this statement of facts beyond a reasonable doubt. Unless otherwise stated, the time periods for the facts set forth herein are at all times relevant to the charge in the Criminal Information.

I. Background

1. From in or about February 1997 until in or about June 2001, Sholeff was employed at PurchasePro.com, an internet software company headquartered in Las Vegas, Nevada ("PurchasePro"). During this time, Sholeff held the positions of sales representative, sales manager, project manager and vice president at PurchasePro.

2. In 2000 and 2001, PurchasePro was engaged in the sale of sourcing software, materials management and procurement software and services. PurchasePro's common stock traded on the Nasdaq National Market under the symbol "PPRO."

3. By mid-2000 and continuing through 2001, PurchasePro's principal product was a so-called business-to-business "marketplace license". As promoted by PurchasePro, the business-to-business marketplace license allowed small and large businesses to buy and sell products on the internet in an allegedly cost efficient manner. PurchasePro sold software to marketplace license purchasers that allegedly enabled those purchasers either to buy and sell products by participating directly in PurchasePro's own web-site based marketplace or to create their own branded marketplace using PurchasePro's software.

4. From in or about January 2000 until early 2001, Sholeff reported directly to a senior vice president at PurchasePro. Starting in or about January 2001, Sholeff worked directly under the Chief Executive Officer and Chairman of the Board of Directors of PurchasePro as Vice-President of Business Development until Sholeff's departure from PurchasePro in or about June 2001. As Vice-President of Business Development, Sholeff's duties and responsibilities included, but were not limited to, traveling and attending meetings with the Chief Executive Officer and Chairman of the Board of Directors of PurchasePro.

5. As a public company, PurchasePro was required to comply with the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Those rules and regulations are intended to protect members of the investing public by, among other things, requiring that a company's financial statements are accurately recorded and reported to the investing public. PurchasePro made periodic filings with the SEC, which included, among other things, its financial statements.

6. As a public company, PurchasePro retained an independent public accounting firm to act as PurchasePro's independent outside auditors ("PurchasePro's auditors"). Among other

responsibilities, PurchasePro's auditors were required to decide whether to approve the recognition of revenue resulting from the sale of marketplace licenses in PurchasePro's audited financial statements.

II. PurchasePro Executive Officer Instructs Sholeff
To Backdate Marketplace License Contracts

7. In March 2001, Sholeff traveled to New York at the request of an executive officer of PurchasePro ("PurchasePro Executive Officer") in order to assist him in selling PurchasePro's marketplace licenses. In order to sell as many marketplace licenses as possible and achieve PurchasePro's revenue objectives for the first quarter of 2001, the PurchasePro Executive Officer and Sholeff worked out of the New York offices of PurchasePro's strategic partner, a major media company headquartered in the United States ("Media Company").

8. An officer of the Media Company, who was based in the Media Company's New York City offices at that time, was one of the persons at the Media Company principally responsible for assisting PurchasePro in achieving its revenue objectives by selling marketplace licenses to the Media Company's vendors and customers.

9. In early April 2001, the officer of the Media Company forwarded or caused to be forwarded to the PurchasePro Executive Officer in New York several marketplace license contracts which had been executed by the marketplace license customers after the close of PurchasePro's first quarter of 2001, i.e., March 31, 2001.

10. The PurchasePro Executive Officer asked Sholeff to backdate or otherwise falsify marketplace license contracts so as to make it appear that the contracts were executed within the first quarter of 2001.

11. In early April 2001, Sholeff heard and observed the PurchasePro Executive Officer and the officer of the Media Company continue to negotiate and finalize the sale of marketplace license contracts in order to try to meet PurchasePro's revenue objectives for the first quarter of 2001 even though PurchasePro's first quarter had already closed.

12. The PurchasePro Executive Officer discussed in the presence of the officer of the Media Company and Sholeff the need to backdate the marketplace license contracts in order to make them appear to have been executed within PurchasePro's first quarter of 2001.

13. Further, the officer of the Media Company and the PurchasePro Executive Officer assisted Sholeff in backdating marketplace license contracts by manipulating the date of the facsimile header generated by the Media Company's facsimile machine in New York. Sholeff understood from his discussions with the PurchasePro Executive Officer, which occurred in the presence of the officer of the Media Company, that the backdating of the marketplace license contracts was necessary in order for it to appear that PurchasePro had earned the revenue under the contracts in the first quarter of 2001.

14. After Sholeff backdated the marketplace license contracts, the PurchasePro Executive Officer asked Sholeff to forward the backdated contracts to PurchasePro's offices in Las Vegas in order to have the contracts booked as first quarter 2001 revenue for PurchasePro.

15. Sholeff understood from the PurchasePro Executive Officer and the officer of the Media Company that the Media Company would receive millions of dollars of commission payments and other forms of revenue from PurchasePro as a result of its role in selling the PurchasePro marketplace licenses and helping PurchasePro achieve recognizable revenue in the first quarter of 2001.

III. Cutting and Pasting of Signature on the Statement of Work

16. In or about early April 2001, the PurchasePro Executive Officer instructed Sholeff and another officer at PurchasePro to assist the PurchasePro Executive Officer in creating false documents in order to make it appear that PurchasePro had achieved its revenue objectives for the first quarter of 2001. One of the false documents that Sholeff was instructed to create was a fraudulent version of a contract entitled "Statement of Work." According to the Statement of Work, the Media Company allegedly promised to pay PurchasePro approximately \$3.65 million for integration of auction functionality into the Media Company's internet marketplace for small businesses.

17. In accordance with the instructions of the PurchasePro Executive Officer described in paragraph 16 above, the PurchasePro officer "cut and pasted" the signature of a senior officer of the Media Company ("Media Company senior officer") onto the Statement of Work from another Media Company document signed by that same officer in order to make it falsely appear that the Media Company had executed the Statement of Work. Sholeff then made numerous and redundant photocopies of the fraudulent version of the Statement of Work so that it would appear that the final copy of the fraudulent version of the Statement of Work contained an authentic signature of the Media Company senior officer. After creating the fraudulent version of the Statement of Work, Sholeff and the other PurchasePro officer showed the document to the PurchasePro Executive Officer and he approved of the fraudulent version of the Statement of Work.

18. Sholeff understood at the time that PurchasePro had to provide the fraudulent version of the Statement of Work to PurchasePro's auditors in order for the auditors to approve PurchasePro's recognition of approximately \$3.65 million in revenue from the Media Company in the first quarter of 2001.

19. Sholeff also understood at the time that PurchasePro would report for the first quarter of 2001 revenue numbers to the investing public that would include the approximate \$3.65 million in revenue based on the fraudulent version of the Statement of Work.

IV. Sholeff Lied to the SEC during his SEC Sworn Testimony

20. An attorney with the Division of Enforcement of the SEC ("SEC attorney") contacted Sholeff in writing on or about November 13, 2001 about an investigation that the SEC was conducting and which related to PurchasePro. On or about November 13, 2001, the SEC also subpoenaed Sholeff for documents and for his sworn testimony.

21. Pursuant to the November 13, 2001 subpoena, Sholeff appeared before the SEC attorney on or about February 22, 2002 in Washington, DC for the purpose of providing sworn testimony. Prior to giving his testimony, the SEC attorney, as authorized by the laws of the United States, caused an oath to be administered to Sholeff. Sholeff then swore to testify truthfully.

A. Sholeff Lied to the SEC about the Forged Statement of Work

22. Sholeff admits that, during his sworn testimony, the SEC attorney showed Sholeff a copy of the fraudulent version of the Statement of Work and asked him questions about it. The following is an excerpt of Sholeff's transcript from his February 22, 2002 sworn testimony before the SEC:

[SEC attorney question]: . . .[D]o you know if anyone falsified [the Media Company senior officer's] signature on [the Statement of Work]?

[Sholeff's answer]: No.

23. Sholeff admits that, at the time of his February 22, 2002 sworn testimony before the SEC, he did not believe his above-quoted answer to be true and that he lied to the SEC when he provided that answer. In truth and in fact, Sholeff knew that, at the instruction of the PurchasePro Executive Officer, he and another officer at PurchasePro had forged the signature of the Media Company senior officer on the Statement of Work.

B. Sholeff Lied to the SEC about Backdating Documents

24. Sholeff admits that, during his sworn testimony, the SEC attorney also asked Sholeff about other false documents. The following is an excerpt of Sholeff's transcript from his February 22, 2002 sworn testimony before the SEC:

[SEC attorney's question]: Are you aware of any documents which were the subject of backdating or false signatures?

[Sholeff's answer]: No.

25. Sholeff admits that, at the time of his February 22, 2002 sworn testimony before the SEC, he did not believe his above-quoted answer to be true and that he lied to the SEC when he

provided that answer. In truth and in fact, Sholeff knew that, at the instruction of the PurchasePro Executive Officer, Sholeff had backdated marketplace license contracts by various means, including, by manipulating the date of the facsimile header generated by the Media Company's facsimile machine in New York.

26. Sholeff admits that both of his aforementioned lies to the SEC were material both to his sworn testimony before the SEC and to the SEC's investigation relating to PurchasePro.

V. Conclusion


27. Sholeff admits that this statement of facts does not represent and is not intended to represent an exhaustive factual recitation of all the facts about which he has knowledge relating to the crimes described herein.

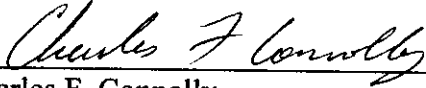
28. Sholeff admits that his actions, as recounted herein, were in all respects intentional and deliberate, reflecting an intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.

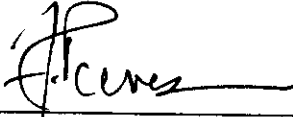
29. The foregoing statement of facts is a summary of the principal facts that constitute the legal elements of the offense of perjury. This summary does not include all of the evidence that the government would present at trial or all of the relevant conduct that would be used to determine the defendant's sentence under the Sentencing Guidelines and Policy Statements.

Respectfully submitted,

PAUL J. MCNULTY
UNITED STATES ATTORNEY

By: 
Dana J. Boente
Assistant United States Attorney


By: 
Charles F. Connolly
Assistant United States Attorney

By: 
Adam A. Reeves
Trial Attorney, Criminal Division
United States Department of Justice

Defendant's Stipulation and Signature

After consulting with my attorney and pursuant to the plea agreement I entered into this day with the United States, I hereby stipulate that the above statement of facts is true and accurate. I further stipulate that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

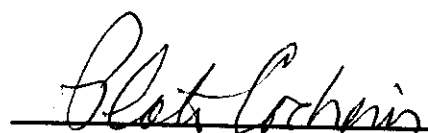
Date: 2/7/04



James S. Sholeff
Defendant

Defense Counsel's Signature

I am the attorney for defendant James S. Sholeff. I have carefully reviewed the above statement of facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date: 2/9/04


Plato Cacheris, Esq.
Counsel to the Defendant


John F. Hundley, Esq.
Counsel to the Defendant